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RECORD, CASE NO. 13901.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 276.

JOHN CADWALADER, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

VS.

THE JESSUP AND MOORE PAPER COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 29, 1889.

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1 UNITED STATES,
Eastern district of Pennsylvania, set:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between The Jessup and Moore Paper Company, plaintiff, and John Cadwalader, collector of customs for the district of Philadelphia, defendant, in a plea of assumpit, a manifest error has intervened, to the great damage of the said John Cadwalader, collector of customs for the district of Philadelphia, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ; so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 28th day of May, A. D. one thousand eight hundred and eighty-nine, and in the one hundred and thirteenth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

2 THE UNITED STATES OF AMERICA, ss:

To The Jessup and Moore Paper Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John Cadwalader, collector of customs for the district of Philadelphia, plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this fifth day of September, in the year of our Lord one thousand eight hundred and eighty nine.

W. MCKENNAN,
Cir. Judge.

Service accepted.

EDWARD L. PERKINS,
Att'y for Def'ts in Error.

1 UNITED STATES,
Eastern district of Pennsylvania, set:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between The Jessup and Moore Paper Company, plaintiff, and John Cadwalader, collector of customs for the district of Philadelphia, defendant, in a plea of assumpit, a manifest error has intervened, to the great damage of the said John Cadwalader, collector of customs for the district of Philadelphia, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ; so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 28th day of May, A. D. one thousand eight hundred and eighty-nine, and in the one hundred and thirteenth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court, U. S.

2 THE UNITED STATES OF AMERICA, ss:

To The Jessup and Moore Paper Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John Cadwalader, collector of customs for the district of Philadelphia, plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this fifth day of September, in the year of our Lord one thousand eight hundred and eighty nine.

W. MCKENNAN,
Cir. Judge.

Service accepted.

EDWARD L. PERKINS,
Att'y for Def'ts in Error.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

THE JESSUP AND MOORE PAPER COMPANY *vs.* JOHN CADWALADER, COLLECTOR OF CUSTOMS for the district of Philadelphia.	No. 36. April Sess., 1888.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1888, No. 36.

It is thus contained:

Be it remembered that on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and eighty-eight, John R.
4 Read, esquire, attorney of the United States for the eastern district of Pennsylvania, comes into court here and presents the petition of John Cadwalader, collector of customs for the district of Philadelphia, for the removal of the cause from the court of common pleas No. 3 for the county of Philadelphia, State of Pennsylvania, which said petition, being filed, is in the words and figures following, to wit:

5 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

The petition of John Cadwalader, collector of customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him as defendant by The Jessup & Moore Paper Company in the court of common pleas No. 3 for the county of Philadelphia, in the State of Pennsylvania, to June term, 1888, No. 68.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of the customs for the district of Philadelphia, the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant as collector aforesaid as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas No. 3 for the county of Philadelphia to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

JOHN CADWALADER,
Collector of Customs.

John Cadwalader, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

JOHN CADWALADER.

Sworn and subscribed before me this eighteenth day of May, 1888,
[SEAL.] WM. MCLEAN,
Notary Public, Philadelphia.

I hereby certify that as counsel for the above petitioner I have examined the proceedings against him and carefully inquired into all the matters set forth in the above petition, and that I believe the same to be true.

JOHN R. READ,
U. S. Att'y.

6 (Indorsed:) No. 36. April session, 1888. Circuit court, United States, eastern district of Pennsylvania, in the third circuit. The Jessup & Moore Paper Company vs. John Cadwalader, collector, etc. Petition for certiorari. John R. Read, attorney for petitioner. Filed May 24, 1888.

7 Which said petition being filed, it was ordered by the court here that a writ of certiorari do immediately issue, directed to the court of common pleas No. 3 for the county of Philadelphia, State of Pennsylvania, which said writ was in the words following, to wit:

8 UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct.:

The President of the United States to the honorable the judges of the court of common pleas, No. 3, for the county of Philadelphia, in the State of Pennsylvania, greeting:

Whereas lately in your said court of common pleas, No. 3, a suit was commenced against John Cadwalader, collector of customs for the district of Philadelphia, by The Jessup and Moore Paper Company, to your June term, 1888, No. 68, which said suit, as it is said, is still pending before you in the said court of common pleas, No. 3, undetermined; and whereas on the application of the said John Cadwalader, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said John Cadwalader, collector, &c., aforesaid, for duties on certain merchandise, &c., claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas, No. 3, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress in such case made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating,

unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of June next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, at Philadelphia, this 24th day of May, A. D. 1888, and in the 112th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.
M.

9 (Indorsed:) No. 36. April sess., 1888. Circuit court, U. S. The Jessup and Moore Paper Company vs. Cadwalader, collector, &c. Writ of certiorari. May 24, 1888. Bro't in office. C. B. Roberts, dep'y prothy. Filed Jan. 2, 1889.

10 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, set.:

Among the records and proceeding of the court of common pleas, No. 3, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 68, June term, 1888, to wit:

Docket entries, June term, 1888.

E. L. Perkins 68 J. R. Read ... May 17, '88	The Jessup and Moore Paper Co. *vs.* John Cadwalader, collector of customs at the port of Philadelphia. May 18, 1887, statement and bill of particulars.	Sums assumpsit. Exit May 9, 1888. Ret. 1 mon. June, 1888, served. May 24, 1888. Certiorari from circuit ct. of U. S. for E. D. of Pa. (of Apl. sess., 1888, No. 36), bt. into office.

Certified from the record this 28th day of May, A. D. 1888.

[SEAL.]

F. H. SMITH,
Pro Prothy.

11 In the court of common pleas, No., for the county of Philadelphia.

THE JESSUP AND MOORE PAPER CO.,
vs.
JOHN CADWALADER, COLLECTOR OF CUSTOMS at the port of Philadelphia. } June term, 1888, No.

Issues summons assumpsit returnable on the first Monday of June, 1888.

5, 9, '88.

EDW'D L. PERKINS,
Attorney for Plaintiffs.

To WILLIAM B. MANN,
The Prothonotary of the said Court.

(Endorsed:) No. 68. June term, 1888. The Jessup and Moore Paper Co. *vs.* John Cadwalader, collector, &c. C. P. 3. Præcipe for sums assumpsit. E. L. Perkins, attorney for plaintiffs. Filed May 9, 1888. W. MacCain, pro prothy.

12 *Summons.*

COUNTY OF PHILADELPHIA, ss.

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, greeting:

We command you that you summon John Cadwalader, collector of customs for the port of Philadelphia, late of your county, so that he be and appear before our judges at Philadelphia at our court of common pleas, No. 3, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of June next, there to answer The Jessup and Moore Paper Company of a plea of assumpsit. And have you then and there this writ.

Witness the honorable Thomas K. Finletter, president judge of our said court, at Philadelphia, the 9th day of May, in the year of our Lord one thousand eight hundred and eighty-eight (1888).

[SEAL.] W. MAC CAIN,
Prothonotary.

13 (Indorsed:) 68. June term, 1888. Court of common pleas, No. 3. The Jessup and Moore Paper Co., vs. John Cadwalader, collector of customs at the port of Philadelphia. Summons. Served John Cadwalader, collector of customs at the port of Philadelphia, by giving to him May 12th, 1888, a true and attested copy of the within writ and making known to him the contents thereof. So answers James F. Herron, deputy sheriff. C. H. Krumbhoar, sheriff.

14 JESSUP & MOORE PAPER CO. *vs* JOHN CADWALADER. } C. P. 3. T., 1888. No. 68.

Enter my appearance in above for defendant.
May 16, '88.

JOHN R. READ,
For Def't.

Proth'y, C. P.

(Endorsed:) C. P. 3. T., 1888. No. 68. Jessup & Moore Paper Co. vs. Cadwalader. Order of appearance. Filed May 17, 1888. J. Kenderdine, Pro., Proth'y. John R. Read.

15 PHILADELPHIA, *May 9th*, 1888.

THE JESSUP AND MOORE PAPER CO. *against* JOHN CADWALADER, COLLECTOR OF CUSTOMS. } C. P. 3. No. 68.

SIR: June T. 1888. This action is brought to recover duties illegally exacted by defendant, as collector of customs at the port of Philadelphia,

and the following is the bill of particulars therein, viz, name of importer, the Jessup and Moore Paper Co:

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry of custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision thereon.
Scrap rubber.....	Darien ..	London...	Oct. 5, '87.	Nov. 18, '87.	Nov. 17, '87.	$236.25	Dec'r. 27, '87.	Dec'r 27, '87.	Feb'y 18, '88.

E. L. PERKINS,
Att'y for Pl'ff.

To Hon. JOHN R. READ,
U. S. Att'y and Att'y for Def't.
Hon. JOHN CADWALADER,
Collector, &c., Defendant.

16 THE JESSUP AND MOORE PAPER CO., *vs.* JOHN CADWALADER, COLLECTOR OF CUSTOMS at the port of Philadelphia. } June T, 1888. C. P., No. 3. No. 68 assumpsit.

Plaintiff's statement under act of May 25th, 1889.

The above suit is brought to recover from the defendant, as collector of customs, the sum of two hundred and thirty-six dollars and twenty-five cents, with interest from Nov. 17, '87, said sum being duty illegally exacted by said defendant from and paid to him by said plaintiff on said 17th day of November, 1887, on a certain lot of "scrap rubber" imported by said plaintiff from London, per steamship "Darien," by invoice dated October 5, '87, and was entered at the U. S. custom-house on November 16, '87. On this importation the defendant demanded and ille-
17 gally exacted the sum of $236.25.

The plaintiff, on December 27, '87, filed his protest against such exaction, and on same date appealed to the Secretary of the U. S. Treasury, who, on February 18, '88, decided adversely to the plaintiff.

No part of said sum has ever been repaid to the plaintiff or any one in his behalf, but the said sum, with interest from November 17, '87, still remains due to the plaintiff by said defendant.

This action is brought in conformity with the provisions of the Revised Statutes of the United States, section 2931, title, Collection of Duties, &c., and the plaintiff attaches hereto as part hereof a bill of particulars of his demand, in compliance with the requirements of section 3012 of said Revised Statutes.

EDW'D L. PERKINS,
Att'y for Pl'ff.

18 STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Harry R. Shultz, being duly sworn, says that he is the agent of and broker for the plaintiff in above suit, and has personal knowledge of the facts set forth in above statement, and that the same are true to the best of his knowledge and belief.

H. R. SHULTZ.

Sworn and subscribed before me this 11th day of May, A. D. 1888.
Witness my hand and official seal.
[SEAL.] HENRY POLSZ,
Notary Public.

STATE OF PENNSYLVANIA,
City & County of Philadelphia, ss:

John T. Dillon, being duly sworn, says that on the eighteenth day of May, A. D. 1888, he served a true and exact copy of the within
19 original bill of particulars and statement on John R. Read, attorney for def't, by leaving such copy at his office, post-office b'd'g, Philadelphia, Pa.

JOHN T. DILLON.

Sworn & subscribed before me the eighteenth day of May, 1888.
Witness my hand and official seal.
[SEAL.] HENRY POLSZ,
Notary Public.

(Endorsed:) No. 68, June T, 1888. C. P., No. 3. The Jessup & Moore Paper Co. *vs.* Cadwalader, collector, &c. Plaintiff's statement, under act of May 25, 1887, and bill of particulars, filed May 18, 1888.—E. J. Walker, Pro Proth'y, & proof of service on May 18, 1888.

20 And afterwards, to wit, on the 28th day of May, 1888, the defendant, by his attorney, John R. Read, esquire, comes into court here and files his affidavit of defence, which said affidavit of defence is as follows, to wit:

21 In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit.

JESSUP & MOORE PAPER CO.
vs.
JOHN CADWALADER, COLLECTOR, &C. } April sessions, 1888. No. 36.

JOHN CADWALADER, being duly sworn, says that he is collector of customs for the district of Philadelphia, and the defendant in the above case.

That the above suit has been brought against him to recover the sum of $236.25, which sum had been collected by him in his capacity as collector of customs aforesaid, as duties due to the United States of America on certain merchandise imported into the said United States by the said plaintiff.

That the said sum was exacted as duties as aforesaid, in accordance with the instructions of the Secretary of the Treasury of the United States, as to the rate and amount of duties due the said United States on the said merchandise.

That the said duties so exacted, this deponent is informed, believes and expects to be able to prove, are legally due to the said United States, under the act of Congress in such case made and provided.

JOHN CADWALADER.

Sworn and subscribed before me, this 26th day of May, 1888.

[SEAL] WM. MCLEAN,
Notary Public, Philadelphia.

22 (Indorsed:) No. 36. April sessions, 1888. Circuit court. United States, eastern district of Pennsylvania, in the third circuit. Jessup & Moore Paper Co. vs. John Cadwalader, collector, &c. Affidavit of defence. John R. Read, attorney for defendant. Filed May 28, 1888.

23 And afterwards, to wit, on the 31st day of May, A. D. 1888, the said defendant, by John R. Read, esq., his attorney, comes into court here and files his plea, which said plea is as follows, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

JESSUP & MOORE PAPER CO. *vs.* JOHN CADWALADER. } April sessions, 1888. No. 36.

And the said defendant, by John R. Read, esq., his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff, Jessup & Moore Paper Co. above thereof complained against him, and of this he puts himself upon the country.

May 31, '88.

JOHN R. READ,
Attorney for Defendant.

24 (Indorsed:) No. 36. April sessions, 1888. In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit. Jessup & Moore Paper Co. vs. John Cadwalader. Plea of defendant. Filed May 31, 1888. John R. Read, attorney for defendant.

25 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards to wit, on the second day of April, A. D. 1889, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come, to wit: William H. Dobson, William H. Stewart, Thomas A. Robinson, John F. Stoer, Benjamin F. Riegel, John D. Snyder, Francis Stokes, William B. Warne, Mitchell Watson, Charles McIntire, Isaac M. Goldsmith, William F. Donaldson, who are duly empanneled, returned, chosen, tried and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the day and year aforesaid, the jurors
26 aforesaid upon their oaths or affirmations aforesaid, respectively do say that they find for the plaintiff and assess the damages at two hundred and fifty-five $\frac{72}{100}$ dollars.

Afterwards, to wit, on the 11th day of April, A. D. 1889, the defendant, by John R. Read, esq., moves the court for judgment non obstante veredicto in the words following to wit:

THE JESSUP AND MOORE Paper Company *vs.* CADWALADER, COLLECTOR. } U. S. C. C., April sess., 1888. No. 36.

27 And now to wit, April, 11th, 1889, the above defendant, by John R. Read, esq., United States attorney, moves the court to grant judgment in favor of the above defendant non obstante veredicto.

(Endorsed:) U. S. C. C. April sess., 1888, No. 36. Jessup & Moore Co. vs. Cadwalader, collector, &c. Motion for judgment non obst. veredicto. Filed Apr. 11, 1889.

28 Afterwards, to wit, on the day and year aforesaid, this cause being called for argument on point of law reserved and motion of defendant for judgment non obstante veredicto, and having been argued by counsel for the respective parties, the court orders that the motion for judgment non obstante veredicto be denied, and that judgment be entered on the verdict in favor of plaintiff and against the defendant.

Whereupon judgment is entered accordingly.

And afterwards, to wit, on the 27th day of May, A. D. 1889, the defendant, by his attorney, files the following bill of exceptions, to wit:

29 In the circuit court of the United States for the eastern district of Pennsylvania, of April sessions, 1888. No. 36.

THE JESSUP AND MOORE PAPER COMPANY *vs.* JOHN CADWALADER, COLLECTOR OF CUSTOMS for the district of Philadelphia.

Be it remembered, that in the said term of April, A. D. 1888, came the said plaintiffs into the said court and impleaded the said defendant in a certain plea of trespass on the case, &c., in which the said plaintiffs declared (prout non), and the said defendant pleaded (prout pleas); and thereupon issue was joined between them.

30 And afterwards, to wit, at a session of said court, held at the district aforesaid, before the honorable William McKennan, judge of the said court, on the 2d day of April, A. D. 1889, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly empanneled (prout list of jurors), at which day came as well the said plaintiffs as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid empanelled to try the said issue, being also called, came and were then and there in due manner

chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiffs, having opened the cause for the Government, offered the following testimony:

31 U. S. C. C., eastern district of Pa., McKennan, J.

JESSUP & MOORE PAPER CO.
vs.
JOHN CADWALADER, COLLECTOR OF CUSTOMS for the port of Philadelphia.

TUESDAY, *April 2d*, 1889—10 *a. m.*

Present: Messrs. J. C. Jones and E. L. Perkins, for plaintiff; John R. Read, esq., U. S. Attorney, and W. W. Carr, esq., Assistant U. S. Attorney, for the U. S.

EDWARD J. COLLINS, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your employment?

A. Clerk in the custom-house.

Q. Certain papers have been presented to you. Will you say what they are [producing papers]?

A. An entry invoice of manufacturers of India rubber. The invoice calls for twenty-two bales of old rubber scrap. They were entered by the importers as twenty-two bales of scrap rubber, and the duties were estimated on them as manufacturers of India rubber as twenty-five per
32 cent ad valorem. The other paper is a protest to the appraisement of twenty-five per cent ad valorem, and claiming that the merchandise was entitled to free entry under the of Revised Statutes.

Q. What is that note [handing paper to witness]?

A. It is the appraiser's return for classification as old India-rubber shoes twenty-five per cent.

Q. The invoice named scrap rubber and the appraiser's return, which is liable to duty as old rubber shoes?

A. Yes, sir.

Cross-examination by the DISTRICT ATTORNEY:

Q. By whom is the invoice written which is endorsed No. 13756, Darien, November 16th, 1887, the red-ink marks here, "Old rubber shoes?"

A. By the appraiser.

Q. And twenty-five per cent?

A. Yes, sir.

Q. By whom is the red-ink "rubber scraps written, as noted November 18th, 1887, Joseph S. Tomlinson, ex approved J. B. Baker, appraiser?"

A. That is written by the appraiser.

Q. Paper endorsed "No. 13756, steamship Darien, London, November 16th, 1887." What is this?

33 A. That is the liquidation.

Q. Upon that invoice that I have just read to you?

A. Yes, sir.

Q. By whom is this paper made out?
A. That is the entry made by Jessup, Moore & Company.
Q. How do they describe it in this?
A. As twenty-two bales scrap rubber.
Q. By whom is this written, "945 manufactures of India-rubber at twenty-five per cent"?
A. By the importer.
Q. That is done by the importer in black ink, is it?
A. Yes, sir.
Q. Is it by the importer or by the importer's custom-housebroker?
A. That is the broker's writing, but the entry is made by the secretary of the Jessup & Moore Company, F. W. McDowell.
Q. On the back of this liquidation is what purports to be the oath of the owner?
A. Yes, sir.
Q. What is the date of that?
A. 17th of November, 1887.
Q. By whom signed?
A. By F. W. McDowell.
Q. Before whom?
34 A. By Joseph Powell, deputy collector. He is in the custom-house.
Q. Read the first three lines of that oath.
A. (Reading.) "I, F. W. McDowell, do solemnly and truly affirm the entry now delivered by me to the collector of Philadelphia contains a just and true account of goods, wares, and merchandise imported by"——

By Mr. PERKINS:

Q. Under the rules of the custom-house the importer is obliged, after that return, to make the entry of manufactures of India-rubber, or the collector would not allow the goods to go out?
A. He is required.
Q. The inspector having so returned it, the owner must conform to that return?
A. He must.
(Papers produced in evidence.)

By the DISTRICT ATTORNEY:

Q. That is the invoice?
A. Yes, sir.
Q. By whom is this presented?
A. That is presented by the importer.
Q. To whom?
A. At the entry desk of the custom-house with the entry.
35 Q. Is the entry presented before this note is made here?
A. Yes, sir.
Q. And then afterwards that invoice goes where?
A. It goes to the appraisers' department.
Q. And then these red-ink marks are entered, are they?
A. Yes, sir.
Q. What is done after that?
A. Then it is sent to the custom-house and it is liquidated.

Q. This entry here, "Manufactures of India rubber," is that made upon this liquidation before the invoice goes to the appraisers' department or afterwards?

A. That is made before. That is made on the entry when it is presented first of all.

Q. What did you mean when you said just now that this entry was made following the return of the appraiser in reply to Mr. Perkins?

A. I meant to say that the liquidation followed on the return of the appraisers.

Q. That is, the liquidation is simply the calculation of the amount of money due?

A. That is the appraisement.

Q. This description of the importation is made in the first instance by the man who presents the liquidation?

36 A. By the importer.

By Mr. PERKINS:

Q. Do you happen to know with regard to that return by the inspector of old rubber shoes, returning these goods as old rubber shoes, that it was done in consequence of a prior decision from Secretary of the Treasury?

A. There had been decisions on that point by the Secretary before.

EUGENE T. SCHAEFFR, having been duly swo'n was examined as follows:

By Mr. PERKINS:

Q. What is your business?

A. Rag dealer—rag and paper stock.

Q. Where is your place of business?

A. No. 1609 North Fifth street.

Q. Do you know anything concerning the importation of this old rubber shoe stock, referred to by Mr. Collins, by the Darien in November?

A. Yes, sir; I bought the rubber shoes from Mr. Solomon, and I did not want to open a credit account and I got them to come through Jessup & Moore Paper Company.

Q. You purchased them through Jessup & Moore, the importers?

37 A. Yes, sir; I purchased them through them, and paid them for them. Bought the whole of the importation.

Q. Have you any samples of that importation here?

A. Yes, sir; there is the sample. (Producing samples.)

Q. Is that a fair sample of the importation which is the subject-matter of this suit?

A. Yes, sir; that is a fair sample.

Q. You have no practical knowledge of the value of crude rubber?

A. No; not of crude rubber.

Q. What is the value of articles of that kind—old rubber shoes? (Objected to.)

Mr. PERKINS. I wish to show primarily by this witness what the value of this stock is per pound. I propose to follow it up by other experts to show what the value of the crude rubber is per pound, and by them also

the assimilation in material in characteristics so far as quality is concerned and in uses. I think under those circumstances it is a perfectly proper question.

(Objection sustained.)

38 Cross-examination by the DISTRICT ATTORNEY:

Q. What is your business?

A. Cotton and woolen rags, paper stock, and old rubber shoes.

Q. Do you happen to know where those shoes were manufactured?

A. I can't tell. Some place in Europe. I can't tell where.

Q. You bought them from whom?

A. Bought them from Solomon.

Q. Where is he?

A. He is in Harburg and Hamburg. They have two places, one in Harburg and one in Hamburg.

Q. You are familiar with the manufacture of rubber shoes?

A. No, sir; merely as a stock dealer just having sold to rubber manufacturers to make them over again.

Q. They are made of rubber, are they not?

A. I suppose they are. I can't tell that. I never saw them made. I buy them for rubber.

Q. You know those are rubber shoes?

A. Yes, sir; I bought them for rubber.

Q. And that the material there was at one time crude rubber?

39 A. Yes, sir.

By Mr. PERKINS:

Q. You do not know what other component parts are in them, do you?

A. No, sir.

Q. Did you sell part of this importation to Mr. Bell and Mr. Brooke, of Trenton?

A. Yes, sir.

THOMAS A. BELL, having been duly affirmed, was examined as follows:

By Mr. PERKINS:

Q. What is your business?

A. I am a rubber manufacturer in Trenton, New Jersey.

Q. In what works?

A. The Star Rubber Works.

Q. How long have you been engaged in the manufacture of rubber?

A. Eight years.

Q. Have you purchased old rubber shoes?

A. We purchase some of them; yes, sir.

Q. Such shoes as those before you?

A. Yes, sir.

Q. Have you bought some from Mr. Schaeffer?

A. Yes, sir.

40 Q. Please state what you do with the shoe after you receive it, state what it is used for and state the whole process.

A. We grind it up into a powder and sheet it out in sheets and then use it in place of crude rubber, sometimes mixing it with crude rubber and sometimes using it by itself.

Q. You use it, you say, for the same purpose for which crude rubber is used?

A. Yes, sir; it is used in the place of crude rubber.

Q. What is the process to which it is subjected. You grind it and then what?

A. It is ground up into a powder and put into a vulcanizer, as we call it, and subjected to a high temperature to drive off the sulphur that was used in the original vulcanization of it. Then it is sheeted out and manipulated just like crude rubber is.

Q. The samples there before you are taken and ground up and devulcanized by this chemical process?

A. Yes, sir.

Q. Have you any samples of the crude rubber and of the rubber shoes after they have been subjected to this process?

A. Yes, sir.

(Samples produced.)

41 Q. Do you know the different kinds of crude rubber?

A. I know most of them.

Q. What are they? Name the most expensive, coming down to the least expensive.

A. The most expensive kind is what is called fine Para, which comes from Para, in Brazil; that is worth about sixty-five cents to-day. There is another grade of rubber called Madagascar which is worth fifty-four cents, which comes from the island of Madagascar. There is what is called coarse Para, which comes from Brazil, and in an inferrior grade of the Para rubber; that is worth about forty cents. Then there are various kinds of African rubber and East India rubber, ranging from twenty-five to forty cents.

Q. Give us the names of those.

A. There is Borneo rubber—what is called Borneo by the trade. There is a Central America rubber, which I omitted, which comes in at about fifty cents. That would come in between the coarse Para and the Madagascar. It comes from Nicaragua and Central America.

Q. Any coarser grades of crude rubber?

A. Yes, sir; there is what is called flake rubber, which comes

42 from Africa. That is worth about sixteen cents now.

Q. Any still inferrior?

A. Yes, sir; there are inferrior grades. I do not know so much about them, but I have bought some at various times. I think there are grades that could be bought now for about seven or eight cents a pound.

Q. Those are also crude rubbers, are they?

A. They are all known as crude rubber.

Q. How does the value of these lower cheap grades of crude rubber compare with the value of old rubber shoes?

A. The old rubber shoe is more valuable than some of the cheap grades of crude rubber.

Q. More valuable than some of the exclusive crude rubber?

A. Yes, sir. That is, the old rubber shoe after it has gone through this process of grinding and devulcanization is worth from ten to fifteen cents per pound, against seven or eight cents per pound for the cheaper grades.

Q. What quality of manufactured rubber does this cheap kind of crude rubber make as compared with the rubber which you manufacture from the old rubber boots and shoes?

43 A. The quality of goods manufactured from the higher-priced rubber of course is very superior.

Q. What is the comparative value as compared with the cheapest kind of crude rubber?

A. The cheapest kind of crude rubber can not be used by itself, I don't think, to any advantage at all. I do not think in our manufacture we have ever attempted it. We use the cheapest kinds sometimes in connection with shoes and in connection with the better grades of rubber, but I think the seven or eight cent rubber by itself could not be used.

Q. What is the lowest of the crude rubber which you could use by itself?

A. The sixteen-cent rubber is the lowest that we have ever used.

Q. What do you make?

A. We make hose, belting, packing, and goods of that kind.

Q. What comparison do the goods manufactured from the fifteen, sixteen, and seventeen cent crude rubber, that you have spoken of, bear to the goods manufactured from the old rubber shoes?

44 A. Sixteen-cent rubber is not used in the same way exactly. You would understand that better from the samples, perhaps. The sixteen-cent rubber is a different kind of gum altogether (producing samples); it is a sticky gum and can not be used like the shoes.

Q. Have you got samples of these shoes manufactured, and also the crude rubber?

A. Yes, sir. I have a sample here of shoes manufactured. There are seventy-six per cent of shoes in that and no rubber at all.

Q. What are the other twenty-four per cent?

A. Whiting and zinc. Here is a sample that has sixty per cent of shoes and twenty per cent of other rubber and some compounds. There is one of forty per cent of shoes and twenty per cent of rubber. There is a sample of the best grade of fine Para rubber with nothing in it but a little sulphur to vulcanize it. (Referring to samples.)

Q. Is there or is there not any of that crude rubber from which you manufacture articles or can manufacture articles equal or about equal in quality to the old rubber shoes; and if so, which rubber is it?

A. I can take this best grade of rubber by compounding it with whiting——

45 Q. The whiting and sulphur, &c., enters into the manufacture of all this rubber?

A. Yes, sir; whiting is used to cheapen it. Whiting is worth a half cent a pound and crude rubber is worth seventy cents a pound. A pound of rubber and a pound of whiting would give a pound at thirty-five cents. It can be reduced to the cost of fifteen cents per pound.

Q. These foreign substances enter into the manufacture of all India-rubber goods, be they boots, shoes, or anything else?

A. Yes, sir.

Q. They are not crude rubbers?

A. No, sir; they are not crude rubbers.

Q. From which of those samples of crude rubber, the lowest-priced samples, could you make an article equal in quality to the old rubber shoes? I mean taking your compounds and all which enter into both.

A. I would use a grade that I have not here (a Central American grade), I think at about fifty cents a pound; it will cut the cost down.

46 Q. What material in the old rubber shoes which you purchase and subject to this grinding process and chemical bath to devulcanize it; what portion of that has any commercial value? What is the material in the old rubber shoes which has commercial value?

A. The rubber.

Q. Is there any material in the old rubber shoes as such, and as known commercially, and as known by you when you purchase, having any value?

A. No; we get rid of all the rest of it in this process.

Q. You would endeavor to eliminate all other component parts of the rubber shoes except the rubber?

A. Yes, sir; it is worth nothing to us unless we can get rid of the rest.

Q. Are or are not the old rubber shoes of any value at all, excepting for the purposes which you have mentioned, of grinding and remanufacturing?

A. No value that I know of.

Q. You never heard of their being of any value other than that?

A. No, sir.

Q. Has the crude rubber any texture or fiber?

A. No, sir.

47 Q. What is the crude rubber?

A. Crude rubber is sap of a tree.

Q. Gum?

A. Yes, sir.

Q. Has the old rubber shoes manufactured by you in the process which you have described any texture or fiber?

A. No, sir; that is all taken out if there is any in. It is all eliminated.

Q. Has the old rubber shoe which you have seen there any other commercial value than to be subjected to the uses to which you have just described?

A. I know of no other to which it can be applied.

Q. Have you ever heard of any other use to which it can be applied? (Objected to.)

Q. You are a rubber manufacturer and have been connected with the rubber works at Trenton for eight years and upwards?

A. Yes, sir.

Q. The two samples marked No. 20 are the same?

A. Yes, sir.

Q. That is, the old rubber shoe after having passed through this grinding and devulcanizing process?

48 A. Yes, sir; it contains seventy-six per cent of shoe and fourteen per cent compound. No crude rubber.

Q. The compound is the whiting and other articles which enter into all compounds of rubber?

A. Yes, sir.

Q. So that for the purposes of this case that is virtually rubber?

A. Yes, sir.

Q. You use those compounds even in your crude rubber?

A. Yes, sir.

Sample No. 83 is sixty per cent of rubber shoes and twenty per cent of crude rubber.

Sample No. 82 contains forty per cent of shoes and twenty per cent of crude rubber. The remainder is compound.

Sample No. 73 is a piece of pure rubber. There is about four per cent of sulphur in that. That is necessary to vulcanize it.

Q. These samples which you have given here, aside from these manufactured from the rubber shoes, are manufactured from the better samples of rubber which you have here before you?

A. Yes, sir. There is a piece of old shoe just after coming out
49 of the heater before being subjected to the final smoothing process. (Referring to rough sample.)

Samples produced by witness offered in evidence.

Cross-examination by the DISTRICT ATTORNEY:

Q. Why is it that these old rubber shoes are worth more than cheap crude rubber?

A. They have a better quality of rubber in their composition in the first place, and this devulcanizing, to a certain extent, restores the original rubber. It brings out the original crude rubber.

Q. When you have reduced these old rubber shoes to a powder what difference is there between it and the crude rubber, which you say is worth seven cents per pound?

A. It is a better grade.

Q. Is that the only difference?

A. It has been vulcanized and sulphur has been mixed with it and other compounds, and those compounds must be driven away from it before it is available.

Q. What is the first step of manipulation that you bring to the cheap crude rubber that you import from Central America?

A. Put it through hot rolls and masticate it—drive off the
50 moisture in it—something like, as boys, we used to chew it and make bubbles. That is the first step.

Q. When is it reduced to powder?

A. That is not reduced to powder.

Q. After you have treated these old rubber shoes to the bath, as Mr. Perkins has described it, and reduced it to a powder, what next do you do?

A. It is then rubbed up—used just as the crude rubber is after it goes through the rolls.

Q. You say it is worth fifteen or sixteen cents a pound, and the Central America rubber is worth seven or eight cents a pound?

A. No, sir; I think the Central America rubber is worth from forty to fifty.

Q. You spoke of one rubber as being worth seven or eight cents?

A. That is the cheaper grade.

Q. What do you call that?

A. There is one grade called Tuni gūm.

Q. What is the difference between the Tuni gum and these old shoes after they are reduced to powder?

A. It is not as good a rubber as the old shoes.

Q. Why?

51 A. It has not the strength and elasticity. One of these cheap gums is called potato, because when it is boiled it very much resembles a potato. You can mash it. It has no elasticity or strength.

Q. When you receive those rubber shoes do you reduce them to the crude condition of the original rubber?

A. That is our object as near as we can.

Q. Then you manufacture it in the various forms to which you desire to put it?

A. Yes, sir; that is the idea exactly, to get the crude rubber out of the old shoes and drive off the sulphur and eliminate the whiting and other compounds that were originally used in the production of the shoes. We take the product of crude rubber as it is then, only inferior because of the fact that it has been through the adulterating process and through the vulcanizing process, and we make it up into other goods.

Q. And that detracts from the quality of the rubber?

A. Yes, sir.

Q. You cannot eliminate all the whiting?

A. Not quite. Rubber shoes are so much adulterated now themselves that it is difficult to get all the foreign substance out. If we had the pure rubber and the sulphur we could probably drive out the most of the sulphur.

52 Q. As a matter of fact do you not know it is impossible for you to reduce these rubber shoes to the same condition as crude rubber?

A. We cannot reduce them to the same condition; no, sir.

Q. Either in material, quality, or texture?

A. We can approximate to it.

Q. You cannot make it the same?

A. No.

Q. That you are clear of?

A. I am clear about that.

By Mr. PERKINS:

Q. But you say you can and do approximate it?

A. Yes, sir.

Q. By this process you approximate the old rubber shoes to the crude rubber?

A. Yes, sir.

Q. Do you approximate both in material, quality, and the use for which the rubber is used?

A. Yes, sir; these samples will show that.

Q. Then in fact the rubber shoes do assimilate more closely in texture, in quality, in material, and in use to the crude rubber than anything else? Is that so?

A. Oh, yes.

53 By the DISTRICT ATTORNEY:

Q. You have not there a sample of a product from your old rubber shoes, have you?

A. Yes, sir.
Q. Show me one.
A. Here is one [handing same to counsel].
Q. That is mixed with something else?
A. Yes, sir.
Q. This is not [rough sample]; this is the result of the rubber shoe?
A. Yes, sir.
Q. What do you do to the old shoe when you first get it?
A. Grind it.
Q. What then?
A. Devulcanize it.
Q. What then?
A. Sheet it out in that shape.
Q. You grind it and devulcanize it?
A. Yes, sir.
Q. That has some sulphur in it, has it not?
A. I cannot tell you. We have driven out all we can get out. I do not think there is much sulphur in that.
Q. What per cent of sulphur about?
54 A. I could not make a guess at it.
Q. Can you not give the jury some estimate of it?
A. I think there is practically none.
Q. Any whiting?
A. There may be some.
Q. Have you any doubt about it?
A. I think there is some.
Q. Some wool?
A. No, sir; there is no wool.
Q. Whiting and sulphur?
A. Yes, sir.
Q. Anything else in it?
A. I can not say. It is prepared very carefully. It is washed and it is treated with acid, and it is subjected to a high heat. We put it through all the manipulation we can.
Q. Are you very sure there is no wool in this?
A. Yes, sir.
Q. What is that [indicating]?
A. I cannot tell you.
Q. Is not that a part of the fabric?
A. That may be something that has just adhered to it.
Q. What is that [handing piece of material to witness]? Is not that part of the fabric?
55 A. It seems to be some foreign substance.
Q. You are a rubber manufacturer, I am only a lawyer, and I am picking these things out of the body of the samples you produced. Do you see that? What is that? Is not that wool?
A. Possibly.
Q. Have you any doubt about it?
A. It may be wool.
Q. Look at these samples again, and tell me whether there is any wool scattered through them or not. I have picked three pieces out of this little sample.

A. It is quite likely there is.

Q. Is it not there?

A. I do not know whether that is wool or what it is.

Q. Is it not a part of the fabric that composed the rubber shoe, and which you reduce to that condition?

A. Undoubtedly.

By a JUROR:

Q. Is wool ever used in the manufacture of rubber shoes?

A. I do not manufacture shoes. I only know that it is used as the lining.

Q. Not in the material itself?

A. Not in the material itself.

56 By the DISTRICT ATTORNEY:

Q. I suppose the body of the texture of the lining of the shoe is cotton?

A. The lining is cotton or wool, but in the rubber covering there is no fabric of any kind.

Q. What is this fabric that you see here?

A. That is cotton.

Q. What I was alluding to was the fine particles scattered through the sample.

A. Whatever of that kind there is in the rubber after it has been manufactured in that shape deteriorates from the quality. We try to get rid of that.

Q. It does deteriorate from the product you have?

A. Yes, sir.

Q. In that particular the product of the old rubber shoes varies from the product of the crude rubber?

A. Of course in grinding these shoes we throw them in the grinder and grind up fabric and everything, and then try to eliminate the fabric by process.

Q. Science has not yet gone so far as to make the product of manipulation of old rubber shoes as to produce a result that is as good as the

57 product of the crude rubber.

A. Not of the best crude rubber. It is better than some of the crude rubber.

Q. In some particulars?

A. In all of the particulars that make rubber goods.

Q. In the manufacture of an old rubber shoe, taking your samples as my guide, there is some sulphur and there is some foreign substance, be it cotton or be it wool?

A. Yes, sir.

Q. In the manufacture of crude rubber there is no wool or cotton; is not that so?

A. There are other substances though.

Q. What are they?

A. There is bark and sand and stone.

Q. That you eliminate as far as you can?

A. We try to.

By Mr. PERKINS:

Q. I think I understood you to say that the process to which you subjected the rubber shoes was for the purpose of eliminating in every particular all substances other than the crude rubber?

A. Yes, sir; that is our object.

58 Q. Is the inside lining of the old shoe, if any such should remain, advantageous or detrimental to the fabric?

A. It is detrimental.

Q. Would you rather have the pieces of wool which Mr. Reed has been taking a magnifying glass to out than in?

A. Yes, sir.

Q. You say that in the material and in the quality and the use to which this product can be applied it more nearly assimilates the crude rubber than any other thing?

A. Yes, sir.

JAMES F. BROOK, having been duly sworn, was examined as follows:

By Mr. PERKINS:

Q. What is your occupation?

A. I am a rubber manufacturer.

Q. Where?

A. At Trenton.

Q. In what establishment?

A. The firm of Brook, Altman & Company.

Q. You are one of the partners of that firm?

A. Yes, sir.

59 Q. How long have you been engaged as a rubber manufact'er?

A. Since 1875. About fourteen or fifteen years.

Q. Do you deal in the article commercially known as old rubber shoes?

A. I do. We buy them.

Q. Did you purchase from Mr. Schaeffer old rubber shoes?

A. I have at a number of times.

Q. Look at the samples of old rubber shoes there. Is that a fair sample of the article which you buy as old rubber shoes?

A. I do not know that we have bought any of this style of shoe exactly from him. We bought old rubber shoes. There may be some of these among them. That is a fair sample of old rubber shoes. This is an imported shoe.

Q. Tell the jury to what process you subject the old rubber shoe after it reaches your factory.

A. The process we subject it to is to crush, pulverize the shoe, reduce it to a powder, and then blow out the wool and cotton fiber.

Q. Mr. Bell has testified to the chemical process.

A. He uses the chemical process, and our process is what is

60 known as the blowing process. We blow the fabric out. We extract the fiber all we can by the blowing process. After the shoe is in that condition, comparatively free from fiber, it is desulphurized or devulcanized, as it is so termed in the works. That is running at a very high heat the vulcanizer to eliminate all the sulphur that is possible. Practically we eliminate all the sulphur. There may be a trace of it left. It is then sheeted out and ready to enter into manufacture of rubber goods.

Q. Your object is the same as Mr. Bell's, to eliminate all foreign substances other than rubber composing the shoe?

A. Yes, sir. Although we do not pay as much attention in the blown process to eliminate the whiting and zinc as they do in the chemical process.

Q. After you have subjected the rubber to the process you have described, what do you then do with it?

A. After it is devulcanized it is dried out and sheeted on the mill and it is prepared then to enter into any composition in the manufacture of rubber goods.

61 Q. After it is devulcanized it is run out in sheets and then prepared with such compounds as are necessary in the manufacture of goods?

A. Yes, sir.

Q. Have you any samples with you?

A. I have a few.

Q. What are the different kinds of crude rubber?

A. It would be a pretty difficult question to enumerate them.

Q. Are there different grades of rubber?

A. A number of different grades.

Q. Called by different names?

A. Yes, sir.

Q. Comeing from different foreign countries?

A. Yes, sir.

Q. Give me a few of them and their relative prices.

A. The best grade of rubber known to the trade is known as the Para rubber, named from Para, from which the most of it comes.

Q. That is the fine rubber?

A. Yes, sir.

Q. That is worth about how much?

A. That is worth from sixty-two to sixty-five cents, depending upon the age and condition.

62 Q. Have you a sample of such rubber as that here?

A. I have not a sample of fine Para.

Q. What is the next lower grade?

A. That is a question. Mad'gascar rates about the next in price to the fine medium Para. That is worth about fifty-three or fifty-four or fifty-five cents a pound.

Q. What is the next lower in quality?

A. We then come on to the finer grades of Central American rubber and Brazilian rubbers. There are Brazilian rubbers known as Pernambuco.

Q. Wnat do you call the Tuni gum?

A. That is a cheaper African gum. That is one of the lower grades.

Q. Worth about how much now or recently?

A. Tuni gum would be probably worth six, seven, eight cents or nine cents, depending on its condition.

Q. There is a gum called flake?

A. Yes, sir; African flake.

Q. About what is the value of that?

A. That is worth about sixteen or seventeen cents.

63 Q. What is the value of the old rubber shoes which you say you have purchased and of which you have samples before you?

A. They are worth about four and a half cents.

Q. When you buy them here?

A. Yes, sir. At the present that is about the market price.

Q. After having subjected them to the grinding process and then eliminating foreign substances in so far as possible by the air blast and bringing them out in the sheets which you have spoken of what is their value then?

A. They are worth then nine, ten, or eleven cents, depending on how well the process is carried out.

Q. When fully mixed with the compound of whiting or whatever other foreign substance you use, what is their value?

A. That depends entirely on the amount of foreign substance you use.

Q. Take the best quality of your rubber shoes and take for the ordinary use such as you could use crude rubber for?

64 A. Some compositions are reduced as low as five cents a pound, because there are some rubber goods sold as low as eight cents a pound.

Q. What is a fair valuation of it, a good article?

A. You mean fair valuation for compounds containing the old rubber shoes?

Q. I mean for the old rubber shoes; yes.

A. From four to five to twenty to twenty-five and maybe thirty cents a pound.

Q. Has the crude rubber any texture or fiber?

A. Nothing that could be called fiber in the sense of the term.

Q. It is gum?

A. Yes, sir.

Q. An exudation from a tree?

A. An exudation from a tree that is coagulated and dried.

Q. You have said that your object in subjecting the old rubber shoes to the process described is to eliminate all foreign substances so as to reduce them as nearly as possible to the condition of crude rubber?

A. Yes, sir. Principally to eliminate the sulphur. That is the most important point.

65 Q. You want to bring them as nearly as possible to the crude rubber?

A. Yes, sir.

Q. Is there any texture or fibre in the old rubber shoe? Of course, I mean in the rubber part.

A. Not in the rubber part. There may be a foreign substance; there may be some fiber in, but whatever is in there is objectionable.

Q. Is there or is there not any other element of value in the old rubber shoe beyond the rubber that it contains?

A. Practically none.

Q. Is there or is there not any other uses to which you apply the old rubber shoe when it passes through the process which you have described different from those uses to which you apply crude rubber?

A. None that I ever heard of, unless it should be to melt up in a compound. That is handling in an entirely different manner.

Q. You have had fifteen years' experience?

A. Yes, sir.

Q. Does or does not the old rubber shoe, when subjected to the process which you have described, most nearly assimilate to the crude
66 rubber in material, quality, and the uses to which it is applied?

A. It does.

Q. Your object is to bring it as nearly as possible to crude rubber?

A. That is our object. It is the only material that does.

Q. Take up one of those rubber shoes. Did you ever hear of rubber shoes such as those coming over here being repaired or used again?

(Objected to.)

Q. Did you ever know of them being?

A. I never knew of them.

Cross-examination by the DISTRICT ATTORNEY:

Q. I suppose there is not any doubt in your mind but what those rubber shoes that are on the floor so called are composed of India rubber, is there?

A. In part of India rubber.

Q. They are composed in part of India rubber?

A. Yes, sir.

Q. As much so as any other rubber shoe you ever saw?

A. I should say so; yes, sir.

Q. It is a manufactured article of rubber.

67 A. It has been.

Q. It is, is it not?

A. I should call it a worn-out article.

Q. Very much the same as you would call a coat that has been worn a worn-out coat?

A. A coat partly worn out may have some other uses as a coat. These have no other uses as a shoe.

Q. There is not any doubt in your mind but what that rubber shoe is a manufactured rubber article?

A. It has been manufactured.

Q. Is it not?

A. Not as we know it now.

Q. Who do you mean by "we know it now?"

A. The consumers know it.

Q. The consumers or those who manufacture the new rubber?

A. Either. We manufacture new rubber shoes and use the same thing. They grind them up and use them in other shoes.

Q. It is not crude rubber, is it?

A. It could hardly be called crude rubber.

Q. Have you any doubt about it?

68 A. It is not crude rubber as crude rubber is known in the market.

Q. Is it known anywhere as crude rubber?

A. After we have manipulated we call it crude rubber.

Q. I am speaking of it as you find it on the floor?

A. Certainly not. It is known as old shoes.

Q. It is a manufactured article of India rubber?

A. It has been.

Q. That is a manufactured article too, is it not? (Referring to rough sample.)

A. That depends on where you draw the line of manufacture. It it not a completed product.

Q. It is a manufactured article, is it not?

A. It is partially manufactured.

Q. That applies to all these samples except the crude rubber that were produced by one of these witnesses?

A. No, sir; it is very different. That is a manufactured article. It is manufactured as far as rubber goes. So is that. (Referring to sample.)

Q. The difference betwen this sample and the four samples that were produced by the previous witnesses is that the one is in a more advance state of manufacture than the other?

69 A. No; one is in the completed state. There is no degrees of manufacture to that. There is this difference between an article in the rubber line that is partly manufactured and one that is not. When the rubber and other materials mix together, sulphur, it is nothing more or less than a mixture. Subject to a certain degree of heat for a certain time it becomes a different article; it becomes a manufactured article of vulcanized rubber.

Q. The difference between this sample and these four is that these are completed products and this is not?

A. I am not speaking of qualities and conditions.

Q. But there is not any doubt in your mind but what this sample has been manipulated by the hand of man and is in a certain stage of manufacture?

A. That is; yes. There is no question about that.

At one o'clock the court took a recess until two o'clock.

2 p. m.

Re-direct examination by Mr. PERKINS:

70 Q. Just before the recess you were asked by Mr. Read with reference to that piece (rough sample); whether it had not undergone some process of manufacture by the hand of man, and your answer was, yes. I ask you with regard to the crude rubber samples which you have presented. Those are known as strictly crude rubber?

A. It is known as crude rubber.

Q. State whether that has not been manipulated by the hand of man, and if so, describe as an expert, and give your means of knowledge with respect to the treatment that that has received.

A. That has all been subjected to handling—some process at the hands of man. It may be called manufacturing process or it may not.

Q. State what the process is that is applied to what is known commercially and generally as crude rubber.

A. In its original condition it is a sap or gummy juice of the tree. It is a little different from some other articles known as gums, from the fact that in order to coagulate it it has got to go through a process. In

71 order to bring it to its present condition as we know it as crude rubber, it has got to be subjected to handling. It is drawn from the tree as a juice, and before it becomes hard it is coagulated or dried. Some grades of rubber are coagulated by adding alkalies to them; by exposing to the rays of the sun. Others are smoked; the curing process.

The fine medium Paras, the best grade of rubber we have, are brought in that condition by smoking or drying process. They have a paddle similar to what you might whittle out of a shingle. They build a fire with a nut known as the Brazilian nut. That produces a very thick heavy smoke. That is built in what you might call a bottomless jug; the jug is confined in a space of three inches and a half diameter. They take the juice as taken from the tree and hold it over the smoke and turn it to prevent the juice from running off, and the heat and the smoke from the nuts cures that rubber and dries it and brings it into the condition you now see it. That is in biscuits—what we call biscuits. They are formed on this paddle an inch and a half or may be two inches thick. Then it is cut off of that paddle and goes into the ship.

72 Q. It is that which gives it that peculiar smoky smell?

A. It is what gives this Para the smoky smell. Coarse Para is the product of the same tree which is not subject to the same manipulation. It is the result of the drippings of the tree or of the paddles or what may be left in the vessels. That is boiled up into lumps and contains more or less dirt and foreign matter, and it is not in as fine condition as the fine quality is.

Q. Then even the crude rubber has been to the extent you described manipulated or manufactured?

A. It has been manipulated to some extent. Some rubbers are passed through rolls to squeeze out the waters or juices that are foreign to the rubbers.

Q. I think you said also that the crude rubber contained foreign substances?

A. It contains more or less foreign substances.

Q. These foreign substances have to be extracted or eliminated before it becomes useful for the manufacture of articles?

A. As much as it is possible to do it.

73 Q. Even in those particulars the rubber shoes as manufactured assimilates to the crude rubber?

A. As far as our purpose is concerned. As far as we are concerned the rubber shoe goes through but one process of manufacture.

Recross-examination by the DISTRICT ATTORNEY:

Q. This crude rubber has no sulphur in it?

A. That has no sulphur in it.

Q. Or whiting?

A. No, sir.

Q. Nor wool fiber?

A. No, sir; unless it has accidentally got in.

Q. After it comes to the market in this state it has no wool fiber in it?

A. Not supposed to have.

Q. Nothing which deteriorates its quality at all?

A. Yes, sir; it has some things which deteriorate; for instance, sand and bark.

Q. In this which you have shown here, the best quality of Para rubber, that has nothing in it such as you speak of being in crude rubber?

74 A. It has more or less moisture and is sometimes slightly acid.

Q. All that is eliminated?

A. That is eliminated. It has to go through a process.

Q. In a sample like this, after it has gone through the machine you have spoken of here, there still remains portions which are not eliminated, sulphur and whiting?

A. The suphur is practically eliminated.

Q. How about the whiting?

A. They are not probably all eliminated.

Q. How about wool fiber?

A. That may not be all eliminated. It depends on how far the process has been carried.

Q. In this sample it has not been eliminated?

A. Not that simple.

Q. It is impossible, as a matter of fact, to take away all of this deleterious matter which may be mixed in with it, which is different from this rubber which you have spoken of?

A. Theoretically they can be eliminated. Practically we do not do it.

75 Q. Will you show me a sample of your reproduction of this remanufacture that you have of your rubber shoes. You spoke of using the blowing process instead of the chemical process?

A. That is prepared now ready to go into rubber compounds or composition. That contains a very little fiber or very little of any of the foreign substances [referring to sample].

Q. This has not been remanufactured again? This is only the result from your manufacture in the reclaimation of the rubber shoes.

A. That is it. It shows for itself how near it approaches rubber. That shows that practically there is no sulphur in it. That has been put through the vulcanizing process. [Referring to another sample.]

Q. It has gone on one stage further in the manufacture?

A. I merely had that done to demonstrate there is practically no sulphur. That piece with the whole cut in it is the shoe after it has been prepared for our uses; what we technically term desulphurized sheeted shoes. This sample is the same thing. That is a compound ready to go into the goods. That with the niche cut in it contains about

76 sixty per cent of the same class of material as the sample with the hole.

Q. What per cent of whiting has that in it [referring to sample with hole]?

A. I could not tell you.

Q. About what?

A. I can not form the least idea.

Q. It has some in it; has it not?

A. It may have some; I can not say it has not.

Q. Crude rubber has no whiting in it?

A. We do not suppose it has any; it ought not to have.

(Samples of shoes are considered in evidence.)

Testimony closed.

77 The COURT. The plaintiffs have presented the following points:

1. "Articles composed of India-rubber within the meaning of the existing tariff laws (sect. 2502, Schedule N) are articles prepared or manufactured from India rubber, of which the preparation or manufacture constitutes some portion of their commercial value. If, therefore, you find

that the commercial value possessed by the old rubber shoes upon which the plaintiffs in this case allege that the duty in this instance was improperly imposed was due solely to the rubber they contained, and not to the preparation or manufacture which they had undergone, they were not 'articles composed of rubber' within the meaning of the tariff law as at present in force."

This I affirm. (Exception for defendant.)

78 2. "If you find that the 'old rubber shoes' in question in this suit were not composed of India rubber within the meaning of the tariff law, and if you find that said 'old rubber shoes' were similar in material, quality, texture, and the use to which they can be applied to crude rubber, your verdict must be for the plaintiffs."

This point is affirmed. (Exception for defendant.)

3. "Under all the evidence your verdict must be for the plaintiffs."

This point is affirmed. (Exception for defendant.)

The defendant has presented the following points:

1. "If you believe that the importation in suit is composed of

79 India rubber not specially enumerated or provided for in the act of March 3rd, 1883, your verdict should be for the defendant."

Refused. (Exception for defendant.)

2. "If you believe that the importation in suit bears a similitude in material, quality, texture, or the use to which it may be applied to an article composed of India rubber, then your verdict should be for the defendant."

Refused. (Exception for defendant.)

3. "Even if the importation in suit be used for the purpose of reclaiming, by chemical process, the rubber contained therein, yet if the product is inferior in material, quality, and texture to crude rubber, then it is not such a similitude to crude rubber as it is necessary under section 2499 for the plaintiff to prove to entitle him to recover, and your ver-

80 dict should be for the defendant."

Refused. (Exception for defendant.)

4. "Your verdict in this case should be for the defendant."

Refused. (Exception for defendant.)

If the plaintiff's first point is sound, they are entitled to recover. I will instruct the jury pro forma, for the purpose of enabling them to find a verdict, that the law is correct as stated in their first point, and that the plaintiffs are entitled to recover, but reserving the right to enter a verdict for the defendant if it should be found that the law is not correctly stated in that point.

This action turns altogether upon a question of law on the constructions which are given to the act of Congress, and as we wish to give further time to the consideration of this question, and to have argument before the full bench upon the subject, I instruct you that the law, as stated in plaintiffs' first point, is a correct statement of the law, and in that view, under the facts here, the plaintiffs are entitled to a verdict for the amount of duty exacted in excess of what should have been charged.

81 This will be subject to consideration by the court hereafter and the court reserves the right to enter a verdict for the defendant in case it should be satisfied that the law is not as stated in this point.

The jury rendered a verdict in favor of the plaintiffs for $255.72.

Subsequently the defendant, by counsel, moved for judgment non obstante veredicto, but the court refused the motion, and judgment was thereupon entered in favor of the plaintiffs upon the said verdict.

(Exception for defendant.)

And thereupon the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record.

The said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and
82 requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided this 27th day of May, A. D. 1889.

W. McKENNAN, [SEAL.]
Cir. J.

The foregoing bill of exceptions is approved.
May 18, 1889.

E. L. PERKINS, *Pro. P'ltf.*

83 (Indorsed:) U. S. C. C. Apr. sess., 1888. No. 36. The Jessup & Moore Paper Co. vs. Cadwalader, collector. Bill of exceptions. Filed May 27, 1889. Presented May 3, 1889. W. McKennan, cir. J.

84 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set.:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of The Jessup and Moore Paper Company vs. John Cadwalader, collector of customs for the district of Philadelphia, of April session 1888, No. 36, on file, and now remaining among the records of the said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this fifth day of September in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

85 (Indorsed:) No. 3616 P sessions, 188–. Circuit court United States, eastern district of Pennsylvania. John Cadwalader, collector of customs for the district of Philadelphia, Plaintiff in error, vs. The Jessup and Moore Paper Company. Certified copy. Pleas and proceedings.

86 (Indorsement on cover:) No. 276. John Cadwalader, collector of customs for the district of Philadelphia, Plaintiff in error, vs. The Jessup and Moore Paper Company. 13901. E. Pennsylvania C. C. U. S. Filed October 29, 1889.

149 U.S. 350

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APR 27 1893
JAMES H. MCKENNEY,
CLERK.

No. 276

October Term, 1892

IN THE

Supreme Court of the United States

JOHN CADWALADER, COLLECTOR OF CUSTOMS, etc.,

Plaintiff in Error

vs.

THE JESSUP AND MOORE PAPER COMPANY,

Defendants in Error

Brief for Defendants in Error

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

EDWARD L. PERKINS
110 South Fourth Street
Philadelphia Pa.

B 36

IN THE

Supreme Court of the United States.

October Term, 1892. Term No. 276.

JOHN CADWALADER, Collector of Customs for the District of Philadelphia,
Plaintiff in Error,

vs.

THE JESSUP AND MOORE PAPER COMPANY,
Defendants in Error.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania; of April Sessions, 1888; No. 36.

Brief of Argument for Defendants in Error.

The above action was brought by the defendants in error, plaintiffs in the Court below, to recover duties claimed to have been illegally imposed by the plaintiff in error, defendant below, upon a lot of old worn out rubber shoes imported from London in 1887.

The questions of law arising upon the facts in the case involve the consideration and construction of the following sections and paragraphs of the Act of Congress,

approved March 3, 1883, with respect to the nature and character of the importation in dispute, as affecting its liability or non-liability to the payment of duties, viz:

"SECTION 2499. There shall be levied, collected and paid on each and every non-enumerated article which bears a similitude, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this title as chargeable with duty, the same rate of duty, which is levied and charged on the enumerated article it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates (of duty) are chargeable, there shall be levied, collected and paid on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest duty; and on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which *the component material of chief value* (at which any of its component parts) may be chargeable. *If two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates: Provided, That non-enumerated articles similiar in material and quality and texture, and the use to which they may be applied, to articles on the free list, and in the manufacture of which no dutiable materials are used, shall be free.*"

"SEC. 2502. There shall be levied, collected, and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules, respectively prescribed, namely:

Schedule N. Par. 454. Articles composed of India rubber, not specially enumerated or provided for in this act, twenty-five (25) per centum. *ad valorem.*"

"SEC. 2503. The following articles when imported shall be exempt from duty.

Par. 724. India rubber, crude, and milk of (free.)"

The old rubber shoes in question were classified by the collector under the above quoted section, 2502, Schedule N., and a duty of twenty-five per cent. *ad valorem*, exacted from the importer.

The defendants in error contended that they were entitled to free entry under the proviso contained in said section 2499, inasmuch as they were "non-enumerated articles," and were "similar in material and quality and texture, and the use to which they could be applied," *only* to an article or material on the free list, to wit, to crude rubber, and therefore that they were exempt from duty.

The uncontradicted testimony satisfied the jury, and the Court below, and will doubtless satisfy this Court, that the only *commercial* use or value of theimportation in question was by reason of the rubber it contained, as a substitute for the crude material, and that to the extent of the failure to eliminate entirely all foreign substances, such as sulphur, whiting, etc., by the mechanical and chemical manipulations described by the witnesses, such commercial use and value was decreased.

The crucial point of the law in this case is, therefore, the point reserved for the trial Judge, and afterwards resolved by him in favor of the defendants in error. (Record pp. 27, 28 and 29), viz.:

Are or are not, old, worn out and discarded rubber shoes, of commercial use and value only by reason of the rubber they contain, as a substitute for crude rubber, and not by reason of the preparation or manufacture they had undergone, "articles composed of India rubber," within the meaning of section 2502, schedule N, of Act of Congress of March 3, 1883?

We aver they are *not*, because:

First.—The phrase "articles composed of India rubber" signifies articles or things manufactured from India rubber.

Second.—A clause in a Tariff Act imposing a duty upon a manufactured article, does not apply to an article, which, though originally within the descriptive words of the clause, has lost its commercial value as such an article.

Third.—The importation in question must be regarded technically as a *material*, to wit: crude rubber, and not an article, for its sole use and value are in its closest approximation to crude rubber; it is and cannot be adapted to any other use or purpose than can crude rubber, and it cannot therefore be considered as having been "differentiated commercially" from the material of which it is composed, viz., crude rubber.

If these propositions are satisfactorily established, it necessarily follows that the importation in this case cannot be classed as "articles composed of india rubber" within the Tariff Act of 1883, but must be admitted free, as "crude rubber."

1. Some designation must be applied to every known object. As to those objects of the neuter gender they may be called "articles," "things" or "materials." Except where extreme refinement of distinctiveness is imperatively necessary, the said terms may be considered as synonymous.

As the points of the contention in behalf of the defendants in error have been above succinctly stated, these terms will be used interchangeably in the following elaboration of said points, except where it becomes necessary to distinguish between the words "articles" and "material."

The interpretation of the clause in question somewhat depends on the meaning of the word "composed." As used in pargraph 454 it is synonymous with "manufactured," "made" or "prepared," and not, as the defendant below averred, with the word "consisting."

There is, however, this marked difference between the words "composed" and "consisting;" the word "composed" besides having the connotation of the word "consisting," (which may be considered as the generic word) has the additional and distinctive connotation of action by conscious agents, which is likewise possessed by the words "manufactured," "made," or "prepared." It connotes

that the article in reference to which it is used, is what it is, by reason of something done to it by man.

For example, the word "consisting" is applicable to the constituent parts either of an ore or of a manufactured article: while the word "composed" can only be properly used in speaking of the constituent parts of the manufactured article.

This distinction is in strict accordance with the etymology of the word (compono) as defined by Webster, Worcester, and The Century Dictionary, sub verb, "compose." The fifth definition by Worcester of the said verb, namely, "to put in a state for any purpose" confirms the principle herein contended for.

The Tariff Law of 1883 uses the two expressions "made of" and "composed of," interchangeably. Section 2502, Schedule K., imposes a duty on "woolen cloths xxx and all manufactures of wool of every description, *made* wholly or in part of wool;" and the very next clause of the same section imposes a duty on "flannels, blankets, xxx and all manufactures of every description, *composed* wholly or in part of worsted, etc."

If not shown by the foregoing remarks that the word "compose" is *never* used in careful composition as meaning simply "*consisting*," a distinct and marked ambiguity has been shown. If ambiguous, it must be interpreted by reference to all the other provisions of the Act relating to India rubber.

By these provisions, duties are imposed upon "India rubber fabrics" and "India rubber boots and shoes," while "crude India rubber" and "milk of India rubber" are exempt from duty.

These provisions, taken by themselves, clearly indicate the intention of Congress to impose duty only on the manufactured articles, and the ambiguous clause, if ambiguous it be, must be interpreted in accordance with

such intention, and in conformity with the meaning contended for by the defendants in error

That this case is not affected by Schedule N. Paragraph, 453 of Section 2502, is at once apparent. The importation in question is in no sense an "India rubber fabric" within the purview of the Statute.

Beard vs. *Nichols*, 120 U. S., p. 260.
Arthur vs. *Davies*, 6 Otto, p. 135.

Further quotations on this point would be but supererogation.

If there is any question of doubt or ambiguity, that doubt must be resolved in favor of the defendants in error as "duties are never imposed on the citizen upon vague or doubtful interpretations."

Chaefer vs. *U. S.* 18 Wal. 516.
Twine Co. vs. *Worthington*, 141 U. S. 468.
Hartranft vs. *Weigmann*, 121 U. S. 609.
and cases therein cited.

2. By the late Secretary of the Treasury, Maynard, on January 25, 1888 (Syn. Treas., Dec., No. 8638), it was decided that "old India rubber boots and shoes" cannot be classified as "India rubber boots and shoes" within the meaning of Section 2502, Schedule N, because they have lost their identity as "India rubber boots and shoes," which is but another way of saying that they have lost their commercial value as boots and shoes.

This view of the matter was acquiesced in by the United States Attorney and the learned Judge who tried this case, and it seems to be so strictly in conformity with the general policy of the Tariff Laws that it is not likely to be controverted on the present argument by the plaintiff in error.

If it is true that the present importation does not comprise "India rubber boots and shoes" within the meaning of the provisions of the Act of 1883, because it has lost its commercial value as such, it must be by reason

of the truth of a proposition substantially similar to the second point above formulated, for there is no logical reason why a rule that applies to India rubber boots and shoes should not be equally applicable to all manufactured articles, whether designated with the same definiteness as "India rubber boots and shoes," or more generally as "articles composed of India rubber."

Every "article," "thing," and "material" provided for in the Revenue Laws, is taxed upon its *commercial identity or value as an article, thing, or material, as well as the use to which it is adapted.*

Meyer vs. *Arthur*, 91 U. S., p. 570.

With respect to the importation in suit, of what does its commercial value as an article consist?

Clearly in its "material, quality, texture, and the use to which it may be applied." If these attributes be lacking, it cannot be treated as an "article" within the commercial and statutory acceptance of the term. Rubber fabrics and rubber boots and shoes possess these attributes, so does crude rubber, and so in fact do old and worn out rubber shoes, if treated as being similar to crude rubber; but old worn out rubber shoes,—without material, quality, texture and use, *as shoes*—have no commercial identity except as crude rubber.

The term "old rubber shoes" is *nominal and superficial* in its character, and the *nature and appearance* of the article may render it doubtful as to the class to which it belongs. Its *intrinsic nature and use* is identical with, and similar *only* to crude rubber.

Under such a state of facts the intrinsic nature and use of the article determines the schedule to which it belongs; and its commercial value fixes its idenity and the rate of duty chargeable.

In re Mills, 49 Fed. Rep., 726.
In re Van Blankenstein, 49 Fed. Rep., 220.
Meyer vs. *Cadwalader*, 49 Fed. Rep., 19.

The importation in question does not and cannot rival or compete with any of our own manufactures, and therefore does not contravene the uniform purpose of revenue legislation which is to tax that which does, and admit free, that which does not so rival and compete.

Lawrence vs. *Allen*, 7 How., 792.

"Manufactures of metals" were held to refer to manufactured articles in which metals form a component part, and not to articles in which they have lost their form or identity.

Meyer vs. *Arthur*, 91 U. S., 570.

Worthington vs. *Robbins* rules the question involved in this suit, in favor of the defendants in error.

In that case certain "white hard enamel" was imported in 1884, which could be used for a number of purposes, but which the Collector of Customs contended was dutiable under the act of March 3, 1883, as "watch materials not specifically enumerated," rather than as "articles manufactured, in whole or in part, not herein enumerated or provided for," as claimed by the plaintiffs.

Mr. Justice BLATCHFORD in delivering the opinion of this Court, says:

"It appears further, that the form or condition of the merchandise as imported affords no evidence or indication of the use to which it is to be applied; that, in the form or condition as imported, it cannot be used for any of the purposes mentioned, nor for any purposes whatever of practical use to which it was adapted or ever applied; and that, before it can be applied to any practical use, its present form and condition must be changed by grinding or pulverizing, and new processes of manufacture be applied."

Worthington vs. *Robbins*, 139 U. S., 341.

Both of the last two cited cases are close to the line of separation between the manufactured and the crude

article. They show that articles are classified for duty not with reference to the material of which they are composed but to the use to which they were destined, and for which they were manufactured; and that an article is not to be taxed with others of a like material, when its use and value as such has been impaired, no longer exists.

The only case which can be quoted as in any degree favoring the views of the plaintiff in error, is the recent case of *Junge* vs. *Hedden*. A careful perusal of the decision in that case must lead to the conclusion that it really supports the contention of the defendants in error, and that the present case is brought within the views expressed by the Court in the closing paragraph of the opinion.

The subject of dispute in that case, was "dental rubber," manufactured, and in material, quality, texture and use, clearly applicable for dental purposes. It was therein held that the word "articles" must be taken comprehensively, and cannot be restricted to articles put into condition for final use, but embraces as well, things manufactured only in part, or not at all.

In the case at bar, the importation must be regarded technically as a *material*, to wit: crude rubber, and not an "article."

It is almost impossible to conceive of any imported material which has not undergone some process of handling or manipulation by man. Crude rubber itself, is no exception to this statement. It must undergo a coagulating or drying process; or it may be, a smoking or curing process. (See testimony pp. 25, 26). But an old worn out rubber shoe, apart from any question as to whether it is a product partially or wholly manufactured, or not manufactured at all, has lost its commercial identity, not only as a rubber shoe, but as an India rubber article, within the purview of the statute, having no material, quality, texture or use, in the shape or form under which it was imported.

On the other hand, "dental rubber" had all these attributes upon which to fix its identity as an article. Its dissimilarity to those articles enumerated in the Act did not impair its use as an article. It was "not crude rubber nor milk of rubber, nor a fabric of rubber, but rubber *rendered more elastic and more attractive by coloring*," and therefore to be properly classed with other rubber articles having use and value.

In that case it was further said: "Nor are we impressed with the argument that, being rubber itself, it must be regarded as a material and not an article composed of rubber, *for its adaptation to dental purposes has differentiated it commercially.*

Washing and scouring wool does not make the resulting wool a manufacture of wool; cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton; but sulphur and coloring matter, when applied as here, make the resulting rubber, while still remaining rubber, an article of rubber as contra-distinguished from rubber crude or rubber merely cleansed of impurities.

Junge vs. *Hedden*, 146 U. S., 239.

The old worn-out rubber shoes in question, *not being adapted to any other purpose than as crude rubber, cannot be regarded as "differentiated commercially" from the material of which they are composed.* It is as *material* that they were imported.

As previously stated, whatever coloring matter, sulphur, whiting, or other foreign substances this material contains, must be eliminated in reducing it, so far as possible, to its original state us crude rubber, the undisputed testimony in the cause showing that all foreign substances are absolutely without use or value, and detract from the quality of the crude rubber to which the material is to be reduced. The process applied to this material, is therefore, merely a "cleansing process," the resultant of which is "rubber cleansed of impurities." If then the rubber shoes in question are not within the provisions of Sec.

2502, schedule N., Par. 454, they must be included within the provisions of the "similitude" clause, (Sec. 2499) as an non-enumerated article "similar in material, quality, texture, and the use to which they may be applied" to crude rubber, and as such, be admitted free. The evidence shows that this material was purchased by rubber manufacturers; ground into a powder; subjected to a blowing process to extract fibres of the lining, or to a high temperature in a vulcanizer to eliminate all the sulphur that is possible, and then sheeted out and manipulated in the same manner, and for the same purposes, as crude rubber. It also appears that the said material is only equal in value to a medium grade of crude rubber. By recent legislation, the point contended for by the defendants in error, viz: that these old shoes, imported as "scrap rubber," more nearly resemble crude rubber in material, quality, texture and use, than any other article has been recogized.

By the Tariff Law approved October 1, 1890, Congress has proclaimed the law now to be what the Court below construed it was under the Act of March 3, 1883, and enacted as follows, viz:

"SEC. 2. "Free List." Par. 613.

India rubber, crude and milk of, and old scrap or refuse India rubber, which has been worn out by use and is fit only for re-manufacture.

"Similar," when applied to description, refers to "similarity of product in adaptation to uses and in uses, though the goods may be classed in commerce as different articles."

Greenleaf vs. *Goodrich*, 101 U. S., 278.

Schneider vs. *Barney*, 113 U. S., 645.

Amer. Net. & Twine Co. vs. *Worthington*, 141 U. S., 468.

EDWARD L. PERKINS,
Attorney for Defendants in Error.